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Ms Mmamoloko Seabe
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JOHANNESBURG
2000

Dear Ms Seabe

APEAL DECISION: 400kV TRANSMISSION LINE BETWEEN THE HENDRINA POWER STATION AND THE MARATHON SUBSTATION VIA THE PRAIRIE SUBSTATION

The Minister of Water and Environmental Affairs, Ms Buyelwa Sonjica, MP, has considered the appeals lodged against the decision by the Department of Environmental Affairs to authorise Eskom to proceed with the erection of the abovementioned 400kV transmission line between the Hendrina Power Station and Nelspruit, via Machadodorp.

After evaluating the appeal and relevant information submitted to her, the Minister has reached a decision. A copy of her decision is attached hereto.

Yours sincerely

BONISWA HENE
CHIEF OF STAFF: MINISTRY OF WATER AND ENVIRONMENTAL AFFAIRS
DATE: 03/12/2009

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MINISTRY
WATER AND ENVIRONMENTAL AFFAIRS
REPUBLIC OF SOUTH AFRICA

Ref: 12/12/20/915

APPEAL DECISION

APPEAL AGAINST THE ENVIRONMENTAL AUTHORISATION OF THE PROPOSED 400kV TRANSMISSION LINE BETWEEN THE HENDRINA POWER STATION AND THE MARATHON SUBSTATION (NEAR NELSPRUIT) VIA THE PRAIRIE SUBSTATION (NEAR MACHADODORP)

1. INTRODUCTION

In terms of Regulation 37(1) of the Environmental Impact Assessment Regulations, 2006 (EIA Regulations), read with section 24 of the National Environmental Management Act, 1998 (NEMA), the Chief Director: Environmental Impact Management of the Department of Environmental Affairs and Tourism (the Department) on 28 August 2008 authorised Eskom to proceed with the erection of the abovementioned 400kV transmission line between the Hendrina Power Station and Nelspruit, via Machadodorp. Six appeals were lodged against the authorisation.

2. BACKGROUND

- 2.1 Eskom has indicated that in light of the steady increase in mining activities, particularly in the Machadodorp area, and continuous residential expansion in the vicinity of Nelspruit, it was compelled to plan for the strengthening of its transmission infrastructure to the Highveld North and Lowveld regions. Hence, it applied to the Department for the environmental authorisation of the construction of the following two 400kV transmission lines:

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- one of approximately 85 km in length from the Hendrina substation, near the Hendrina Power Station, to the Prairie substation near Machadodorp;
- another of approximately 100 km in length to link the Prairie substation with the Marathon substation near Nelspruit.

2.2 An environmental impact assessment (EIA) for the proposed transmission lines was undertaken by Eskom's environmental consultant. This EIA was informed by specialist studies on the possible social, visual, heritage and avifauna impacts of the proposed lines as well as of the anticipated impacts of the lines on terrestrial ecosystems. Furthermore, the soil and agricultural potential of the areas to be traversed by the lines was assessed and a study of relevant geotechnical aspects was undertaken. A number of alternative route alignments were also considered. Finally, a preferred route option was selected for each sector of the line (between Hendrina and Prairie and between Prairie and Marathon) which was authorised by the Department on 28 August 2008.

3. THE APPEALS

3.1 Six appeals were lodged against this environmental authorisation (EA). Three appeals were submitted by land owners in the vicinity of the proposed Prairie substation, while a further three appeals originated from an area in close proximity to the Marathon substation.

3.2 The following emerged as the major grounds of appeal:

3.2.1 The appeals which originated from the Prairie area were mainly based on dissatisfaction with the public participation programme (PPP) which was conducted by Eskom. The following are proffered as reasons:

3.2.1.1 All owners of properties with a potential to be traversed by the transmission line, regardless of the relevant route alternative, should have been contacted and provided with pertinent information.

3.2.1.2 On a map provided by Eskom, on which affected properties were shown, many land owners were indicated as "status unknown." No indication was given whether these owners had been identified and contacted, despite the fact that one of the route alternatives is to pass through, or immediately alongside, these properties.

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- 3.2.1.3 The attendance of public meetings and open days during July and August 2007 was very poor. This is indicative of the inadequacy of the PPP which failed to identify and inform key stakeholders.
- 3.2.1.4 Many land owners in the Machadodorp area, who will be affected by this proposed line and associated substations, only became aware thereof during the PPP for a 132kV distribution line. Ideally, a comprehensive PPP should have been conducted for all three of these developments.
- 3.2.1.5 Eskom's environmental consultant recommended that a 1 km corridor be authorised by the Department. Should this happen, the number of land owners directly affected would increase.
- 3.2.1.6 The maps included in the environmental impact report (EIR) and used during the information meeting were of a very poor quality.
- 3.2.1.7 The ownership maps used at the information meeting should have been included in the EIR. This would have enabled the Department to determine the extent to which land owners had not been contacted.
- 3.2.1.8 The poor attendance of the public meetings caused that a number of environmental issues were not identified in time to be taken into consideration during the EIA.
- 3.2.2 The appellants of the Prairie area also submitted the following grounds of appeal pertaining to shortcomings in the EIA process and the EIR:
- 3.2.2.1 The area has already been subjected to significant environmental impacts associated with existing transmission lines and substations, mining, forestry and heavy industry. The cumulative environmental impact of the proposed transmission and distribution infrastructure will be unacceptable and has not been adequately addressed.
- 3.2.2.2 In the EIR for this project, the Report is erroneously referred to as the EIR for the two proposed substations, which is a different but related project. This could be misleading and confusing, especially to the lay reader.
- 3.2.3 Apart from certain references made to inadequacies in the PPP conducted by Eskom, which, to a large extent, correspond with those mentioned in paragraph 2.7.1 above, the main thrust of the

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appeals lodged by the appellants in the Marathon area pertained to alternative routes proposed by the appellants, specifically in the vicinity of the Eden Private Nature Reserve and the Brondal Conservancy. Allegedly, such proposals were not taken into consideration by Eskom.

4. DECISION

4.1 In reaching my decision on the appeal against the proposed Hendrina-Prairie-Marathon 400kV transmission line, I have taken the following into consideration:

- 4.1.1 The information contained in the project file (ref. 12/12/20/915);
- 4.1.2 The appeals submitted by the six appellants;
- 4.1.3 The response of the applicant (Eskom) to the grounds of appeal;
- 4.1.4 The comments of the Department on the grounds of appeal, on the applicant's response and on the answering statements of one appellant;
- 4.1.5 A report entitled "*Hendrina-Prairie-Marathon Transmission Line: Comparative Assessment of the Approved Route for the 400 kV Transmission Line and the Proposed Alternative via the Sterkspruit Valley, July 2009*," and
- 4.1.6 The need for the development of this transmission line to provide for the steadily increasing electricity demand in the Highveld North and Lowveld Regions.

4.2 Having considered the above information, I have concluded that the Chief Director: Environmental Impact Management of the Department adequately considered the major anticipated environmental impacts of the proposed transmission line and that the decision to authorise the development was correct. In addition, the implementation of the mitigation measures proposed in the environmental impact assessment report (EIR) and compliance with the conditions contained in the EA will ensure that the impact of the line is mitigated to acceptable levels. Therefore, in terms of section 43(6) of NEMA I have decided to:

- 4.2.1 Dismiss the appeal against the EA granted by the Chief Director: Environmental Impact Management of the Department for the development of the proposed transmission line; and

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4.2.2 Confirm the EA issued by the Chief Director: Environmental Impact Management of the Department on 28 August 2008 for the construction of the proposed transmission line, except to the extent as indicated in paragraph 4.3.2.4 below.

4.3 The reasons for my decision, *Inter alia*, are as follows:

4.3.1 The need for this development has been adequately demonstrated.

4.3.2 The grounds of appeal are not, in my view, sufficient to warrant the setting aside of the decision by the Chief Director: Environmental Impact Management of the Department. In justification of my view I shall briefly discuss each of the major grounds of appeal below:

4.3.2.1 Alleged deficiencies in the public participation process (PPP)

I took note of Eskom's response to the appeals and of the description of the PPP as is contained in the EIR. I am satisfied that the PPP, which was conducted by Eskom's environmental consultant, met the requirements for such a process, as outlined in the EIA Regulations. Hence, I do not regard the reasons indicated in paragraphs 3.2.1.1 to 3.2.1.8, regarding the deficiency of the PPP, as convincing. Consequently, I am not prepared to accept those reasons as a sufficient ground to set aside the authorisation for this development proposal.

4.3.2.2 The cumulative environmental impact of the proposed transmission infrastructure will be unacceptable and has been inadequately assessed

The area to be traversed by the transmission line has already been significantly impacted on by developments such as mining, forestry, heavy industry and existing transmission infrastructure. It is averred that the impact of the proposed transmission line, in addition to the impacts of the existing developments on certain sensitive ecosystems, will be unacceptable. However, I am satisfied that all the issues raised by the

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appellants have been addressed comprehensively during the EIA and are reported on in the EIR. I acknowledge that the construction of the proposed line will have negative impacts. However, at the same time, it must be recognised that the route alternative, ultimately selected for the construction of the line, is the least environmentally sensitive route. Therefore I do not regard the impact of the proposed line as unacceptable, especially when considered against the need for the provision of this additional transmission capacity in these parts of Mpumalanga.

4.3.2.3 Alleged confusing statements in the EIR

In the EIR of this project, the Report is in a few instances erroneously referred to as the EIR for another related project. The appellants allege that this could be misleading and confusing, especially to lay readers. It is admitted that this is an error of compilation. However, having regard for the context of the EIR, this could not have resulted in readers being confused. Hence, this argument is not considered convincing and is therefore rejected.

4.3.2.4 Alternative routes proposed by appellants in the Marathon area, specifically in the vicinity of the Eden Private Nature Reserve and the Brondal Conservancy, were not considered by Eskom

I took note of the fact that the appellants in the vicinity of the Marathon substation submitted a proposal to Eskom for an alternative route for the line in that area, which is referred to as the Sterkspruit alternative. I also took note that Eskom requested its environmental consultant to undertake an additional study in which this proposed alternative was compared with the originally authorised route. The report on this study has recently been submitted to my office. I was informed and am satisfied that this matter was thoroughly investigated. I concur with the findings of Eskom's environmental consultant, namely that the anticipated social and financial impacts of a line along the Sterkspruit alternative, renders that route as a

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unfeasible option and consequently that the authorised route is still the most acceptable choice.

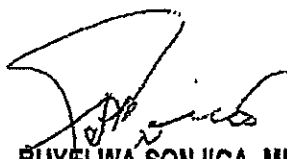
However, in order to provide a reasonable opportunity for the owners of the Brondal Conservancy and the Eden Private Nature Reserve to submit their concerns about the anticipated environmental impacts of the construction and maintenance of the line along the authorised route and to develop, together with Eskom, appropriate measures for the mitigation thereof, I direct that the Environmental Authorisation of 28 August 2008 be amended by the insertion of the following paragraph after paragraph 1.23 under the heading "Management of the activity":

"1.23A The EMP must be revised to provide for the implementation of the recommendations contained in the report entitled "Hendrina-Prairie-Marathon Transmission Line: Comparative Assessment of the Approved Route for the 400kV Transmission Line and the Proposed Alternative via the Sterkspruit Valley, July 2009", which pertain specifically to the mitigation of the environmental impacts of the line, both during construction and maintenance thereof, and which provide for the involvement of the occupiers of land in the Eden Nature Reserve and Brondal Conservancy in the development of such mitigation measures.

In view of the above, I am of the opinion that Eskom duly considered the proposal submitted by the appellants in the vicinity of the Marathon substation and that this ground of appeal can be dismissed.

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4.4 The reasons set out above are not exhaustive and should not be construed as such. I reserve the right to provide comprehensive reasons for this decision should this become necessary.



BUYELWA SONJICA, MP

MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS

DATE 28/11/09